

EXHIBIT 5

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

— — —

HONORABLE LEE H. ROSENTHAL, CHIEF JUDGE PRESIDING

UNITED STATES OF AMERICA, Case No. 4-12-cr-00503-1

Plaintiff,

vs.

JASON DANIEL GANDY,

Defendant.

SENTENCING HEARING

OFFICIAL REPORTER'S TRANSCRIPT OF PROCEEDINGS

Houston, Texas

December 18, 2108

APPEARANCES:

For the Plaintiff: Sherri Lynn Zack, Esq.
Kimberly Ann Bulger Leo, Esq.

For the Defendant: Seth Kretzer, Esq.
Sean Ryan Buckley, Esq.

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Southern District of Texas
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Proceedings recorded by mechanical stenography. Transcript
produced by Reporter on computer.

PROCEEDINGS

(The following proceedings held in open court.)

* * *

THE COURT: Are we ready in the Gandy matter?

MS. ZACK: Yes, Your Honor.

THE COURT: Mr. Gandy.

Go ahead and state your appearances.

MS. ZACK: Sherri Zack and Kim Leo on behalf of the United States, Your Honor. Good morning.

MR. BUCKLEY: Good morning, Your Honor. Sean Buckley and Seth Kretzer on behalf of Mr. Gandy.

MR. KRETZER: Good morning, Your Honor.

THE COURT: Good morning.

Mr. Buckley and Mr. Kretzer, has Mr. Gandy been given a full opportunity to review the presentence report and discuss it with you?

MR. BUCKLEY: I believe so and --

THE COURT: Can you outline for me what those opportunities consisted of?

MR. BUCKLEY: Yes, Your Honor.

On, approximately, September 16 -- if I may, Your Honor, refer to my notes. September 16 of this year, Your Honor held a status conference upon Mr. Kretzer's and my concern that we were having difficulty meeting with Mr. Gandy

1 because he had been placed on the suicide watch.

2 And following that meeting, Your Honor instructed the
3 U.S. Marshals Service to help us facilitate those visits.
4 And since then, the Marshals Service has been very
5 responsive to us in allowing those visits upon our request.

6 On September 16 -- also, on September 16 during that
7 court appearance, Mr. Kretzer provided a paper copy of the
8 presentence report to Mr. Gandy. What I cannot tell the
9 Court is what happened to the report when Mr. Gandy was
10 transferred back to the FDC. I understand there may be a
11 protocol there for what he's allowed to possess and what
12 he's not, while he is in suicide watch. But that report was
13 provided.

14 It's my understanding, from subsequent discussions with
15 Mr. Gandy, that he had an opportunity to review at least a
16 portion of that report. He's not indicated to me that he's
17 reviewed the report in its entirety.

18 Then on October 20, 2018, Mr. Kretzer and I scheduled a
19 visit at the FDC --

20 (Cellphone interruption.)

21 MR. BUCKLEY: Hoping it wasn't mine. Apparently, it
22 was not.

23 Mr. Kretzer and I scheduled a visit at the FDC to meet
24 with Mr. Gandy and discuss the presentence report.

25 Mr. Gandy did not present himself with a visit, and so

1 Mr. Kretzer and I left.

2 On November 30, 2018, Mr. Kretzer and I, again, went to
3 the FDC to discuss this matter with Mr. Gandy. But I think
4 the best way to characterize it is our discussion got
5 sidetracked. And Mr. Kretzer and I -- or, frankly, I made
6 the decision to terminate the meeting because I felt that it
7 had gotten off course.

8 Yesterday, again, I went to the FDC to visit with
9 Mr. Gandy in a final effort to discuss the presentence
10 report, taking with me a full copy of the presentence
11 report. Mr. Gandy indicated to me that he did not wish to
12 discuss it.

13 He expressed some frustration with both a trial decision
14 that I made regarding a witness, as well as my reluctance to
15 assist him in addressing matters regarding his treatment
16 within the FDC, and that he wished to terminate me as his
17 counsel and receive additional counsel or other counsel that
18 would be more responsive to his request.

19 So that is the most thorough recitation I can provide to
20 the Court.

21 THE COURT: All right.

22 MR. KRETZER: If I can briefly, Your Honor. Also,
23 as the Court saw, I arrived to the courtroom this morning
24 about approximately 30 minutes before Mr. Buckley, and I
25 provided a copy of the PSR to Mr. Gandy on my iPad here. He

1 looked at my iPad and read it. And we have discussed not
2 every single page, but the pertinent parts of the PSR.

3 THE COURT: So you have discussed the pertinent
4 parts?

5 MR. KRETZER: Yes.

6 THE COURT: Tell me what you mean by "the pertinent
7 parts."

8 MR. KRETZER: The guideline computations. The
9 difference between grouping. Which counts group, which
10 counts don't.

11 THE COURT: Did Mr. Gandy ask any questions of
12 either of you during the discussions about the PSR?

13 MR. KRETZER: Yes. He's asked me some questions.
14 I've tried to answer them as thoroughly as I could.

15 THE COURT: Good. And did he appear to understand
16 the answers to the questions?

17 MR. KRETZER: I believe so, yes.

18 THE COURT: Were questions logical, intelligence,
19 and appropriate?

20 MR. KRETZER: Yes.

21 One thing that Mr. Buckley didn't mention, we visited at
22 the special room that the marshal's BOP, whoever, has made
23 available. Our visit, the most recent -- I wasn't there
24 yesterday. But the one about two weeks ago, we were in the
25 room I believe at least for an hour. So, I mean, it wasn't

1 as though we didn't have an in-depth conversation. I
2 believed him to be lucid in his communications.

3 MR. BUCKLEY: I will concur with that, Your Honor.
4 Also, I would mention that Mr. Gandy does appear to be
5 extremely emotionally distressed, due to his -- what he
6 views as mistreatment within the BOP, FDC. And his concerns
7 that he's approaching sentencing at a time when he's under
8 so much distress that he can't concentrate.

9 That being said, I do concur with Mr. Kretzer's
10 assessment. As a counsel and as an officer of the Court,
11 I'm not aware of any indication that we need to address
12 competency as that is defined under the law.

13 THE COURT: Certainly, Mr. Gandy has been -- on
14 previous occasions leading up to his trial, been examined
15 several times and determined to be competent during the
16 examination.

17 MR. BUCKLEY: I don't have personal knowledge of
18 that, Your Honor, but I'm aware of that.

19 THE COURT: It's in the record.

20 All right. Is there anything else you wanted to add to
21 the description of the opportunity to and the fact of
22 Mr. Gandy's review and discussion with counsel of the
23 presentence report and recommendation?

24 MR. BUCKLEY: Nothing that I believe I can offer in
25 addition, Your Honor.

1 THE COURT: All right. Did you make it clear that
2 Mr. Gandy's sentence under the guidelines could include up
3 to life?

4 MR. BUCKLEY: During our last visit when Mr. Kretzer
5 and I visited together, and that would have been on
6 October -- pardon me, on November 30, 2018, Mr. Kretzer made
7 that clear to Mr. Gandy that his guideline range was up to
8 life. I was present in the room.

9 THE COURT: All right. Thank you.

10 Is there anything that you want to add, Mr. Gandy?

11 THE DEFENDANT: Thank you so much. I have patiently
12 waited for them to finish speaking.

13 THE COURT: Just on this issue, and then we'll get
14 to the specific --

15 THE DEFENDANT: The day that they made the
16 appointment with you because I was in suicide watch, they
17 handed me this same thing. And the marshals took it from
18 me.

19 I went and was put in suicide watch. And I've not been
20 allowed water, toothbrush, a spoon to eat with, a shower. I
21 have spent 89 days --

22 THE COURT: You haven't had any opportunity to
23 bathe?

24 THE DEFENDANT: They don't have hot water. When you
25 push the --

1 THE COURT: Have you gotten washed during that
2 period?

3 THE DEFENDANT: No, ma'am.

4 THE COURT: Not even today?

5 THE DEFENDANT: Not in the last two weeks.

6 THE COURT: Let me turn to the marshals. Has there
7 been --

8 THE DEFENDANT: I've been wanting to speak
9 with them.

10 THE COURT: Is Mr. Gandy unwashed for the last
11 month?

12 THE DEFENDANT: I have an infection on my neck from
13 two-weeks-ago. The shower. I've been wanting to speak with
14 the marshals. My attorneys have been preventing me from
15 speaking with the marshals.

16 THE COURT: Well, that's to protect you from
17 divulging and making statements that could be harmful to
18 you, and I understand that.

19 Let me ask the marshals.

20 THE UNITED STATES MARSHAL: We haven't heard from
21 FDC. We have to go back and check.

22 THE COURT: Go do that, or have that done right now,
23 please.

24 THE UNITED STATES MARSHAL: We can do that. Sure.

25 THE DEFENDANT: I would like them to have a pen and

1 paper and let me document some things that are going on.

2 THE COURT: Just tell me, and the court reporter
3 will document them for you.

4 THE DEFENDANT: Oh, okay.

5 THE COURT: Are we talking about what is going on in
6 the marshal's custody?

7 All right. So have you --

8 THE DEFENDANT: Okay. Let me --

9 THE COURT: Have you reviewed the presentence
10 report, including this morning with Mr. Kretzer?

11 THE DEFENDANT: When they gave me this paper --

12 THE COURT: "They" being your lawyers?

13 THE DEFENDANT: When my lawyers give me this paper
14 back in September 16, you said?

15 THE COURT: Uh-huh.

16 THE DEFENDANT: I was not given an opportunity to
17 read it. And then when they met me in December to read it,
18 they didn't have a copy. They didn't bring a copy.

19 So then today, 9:30-ish, when Seth --

20 THE COURT: Mr. Kretzer.

21 THE DEFENDANT: -- showed up, I was given his
22 tablet. And I did not have an opportunity to read more than
23 a --

24 THE COURT: Here's what we're going to do. It's now
25 seven minutes after 10:00. We will resume at 11:07. You

1 will spend the next hour with your lawyers reviewing and
2 reading and discussing the presentence report.

3 Is that understood? Right now.

4 THE DEFENDANT: Can I get a hot shower to get the
5 infection off of --

6 THE COURT: You know, we will get a nurse to come
7 and look at it and administer surface antiseptic, if that is
8 appropriate, and get it cleaned up. That will take care of
9 that issue.

10 But is there a room, even the holding cell?

11 THE UNITED STATES MARSHAL: Yes. We can do it on
12 the 10th floor.

13 THE COURT: I will see you in one hour, Counsel.

14 And if there are victims in the courtroom waiting to
15 testify, you'll get that opportunity, but it will be an
16 hour. Go get a cup of coffee, please.

17 In the meantime, would you find out information about --

18 THE UNITED STATES MARSHAL: Yes, Your Honor. We're
19 making the call right now.

20 THE COURT: -- whether there has been any
21 opportunity for Mr. Gandy to bathe, wash, spit bath,
22 anything that would get him washed --

23 THE DEFENDANT: Nothing.

24 THE COURT: -- over the last, I guess, two months?

25 THE UNITED STATES MARSHAL: Yes, Your Honor.

1 THE COURT: Thank you. See you in an hour.

2 (Court in recess.)

3 THE COURT: Super. Please be seated. Everyone has
4 returned. Thank you.

5 Mr. Buckley, Mr. Kretzer, come on up. Over the break,
6 were you able to have a discussion with Mr. Gandy about the
7 presentence report and the related materials?

8 MR. BUCKLEY: Yes, we were, Your Honor. With regard
9 to that, I believe we've identified two categories of
10 objections.

11 THE COURT: All right.

12 MR. BUCKLEY: Without reference to individual
13 paragraphs, I think I can characterize them in a broad sense
14 that would be meaningful.

15 The first category would be the paragraphs that relate to
16 offense conduct or the precise details or allegations made
17 in the offense conduct. And Mr. Gandy objects to those
18 paragraphs as unsupported by the record.

19 The second category would be the paragraphs that relate
20 to allegations made by confidential informants in the
21 Federal Detention Center, in particular relating to
22 allegations of obstruction of justice or targeting of
23 individuals. And so Mr. Gandy also objects to those as
24 unsupported by the record and false.

25 THE COURT: All right.

1 Mr. Gandy, would you join your counsel, please. And were
2 you able to get Mr. Gandy's neck looked at?

3 MR. BUCKLEY: Yes, Your Honor. A gentleman from
4 medical came up and appeared to apply some procedure to it
5 and appeared satisfied that he had done what needed to be
6 done.

7 THE COURT: Very good.

8 Did we obtain any information about Mr. Gandy's access to
9 personal hygiene opportunities?

10 THE UNITED STATES MARSHAL: Yes, Your Honor.

11 Your Honor, I was faxed over recently a log. It only
12 goes back this week. But it is indicating he has been
13 eating and showering as of this morning. I'm currently
14 waiting for more faxes from previous dates to come in. If
15 you would like to look at this.

16 THE COURT: Yes, please. This will be made part of
17 the record of this hearing, and I would like the additional
18 ones when they come in.

19 MR. BUCKLEY: There's another matter, Your Honor, if
20 I may. In the course of our discussion with Mr. Gandy, and
21 as he came to understand that there would be victims
22 testifying here today pursuant to their rights under the
23 Victims' Rights Act, Mr. Gandy expressed a wish that we had
24 arranged for witnesses to testify on his behalf.

25 And for the record, Your Honor, it has been my opinion

1 that that would be counterproductive. And, particularly,
2 Mr. Gandy has requested that some of his fellow inmates
3 could provide meaningful testimony. I feel that that would,
4 likewise, be counterproductive. But I wanted to bring
5 Mr. Gandy's wish to the Court's attention.

6 THE COURT: Very good. Thank you.

7 All right. So with respect to the first objection that
8 the offense conduct allegations are unsupported by the
9 record, including the evidence at trial, would you like to
10 put anything on the record with respect to that?

11 MS. ZACK: Only, Your Honor, that as far as the PSR
12 goes -- and I know this Court and defense counsel are aware
13 of it -- the standard is preponderance of the evidence. And
14 it is up to Your Honor to make a determination as to whether
15 or not the sources which provided the information that was
16 then put together and summarized by probation are, in fact,
17 credible.

18 On top of which, Your Honor did sit through the entire
19 trial. I believe that all of the information in the PSR is
20 supported by credible evidence. And we believe that that
21 objection should be overruled.

22 THE COURT: Anything further?

23 MR. BUCKLEY: Nothing further on that, except that I
24 would let the record speak for itself.

25 THE COURT: All right.

1 And the Court is familiar with this record. The case has
2 been with us for an extended period. The Court did sit
3 through the trial. And the Court finds and determines that
4 the offense conduct allegations are amply supported by
5 reliable evidence and ample evidence that was properly
6 admitted at trial, and that there is no basis for any
7 concern that any aspect of the offense conduct alleged is
8 not supported by more than a preponderance of the evidence.

9 Second category is the category of challenge to
10 information from confidential informants in the FDC relating
11 to obstruction of justice charges.

12 Is there anything that you wanted to add to that beyond
13 what we've already stated?

14 MR. BUCKLEY: The only thing I would add, Your
15 Honor, is that this does carry with it an additional level
16 of faith, in the sense of we're receiving information from
17 the primary source being someone who would have a clear
18 motive to generate any information that could be helpful to
19 them. And, often, that is information that goes to the
20 detriment of other inmates. It is hearsay that goes beyond
21 the oral testimony of someone who has been placed under oath
22 and on the witness stand in front of Your Honor and subject
23 to cross-examination.

24 So I do think there is attenuation of credibility there
25 that deserves come consideration. And, particularly, since

1 the allegations themselves are so incendiary, that is a
2 concern. And they would add points as obstructive --
3 obstruction of justice.

4 THE COURT: Ms. Zack, do you and your colleague want
5 to respond?

6 MS. ZACK: Yes, Your Honor.

7 First of all, we believe that the individuals that
8 provided this information did provide credible information.
9 They were not provided any special treatment for the
10 information that they provided. In fact, all of them said
11 they were willing to provide that information with nothing
12 in return.

13 Additionally, there was a phone call that was a recorded
14 phone call from the jail between Mr. Gandy and Minor Victim
15 One, where he was offering him money to change his
16 testimony. That there were threats made against myself,
17 made against the victims and --

18 THE COURT: In this telephone call?

19 MS. ZACK: No, no, no. The threats were based on
20 different individuals that were, in fact, interviewed by the
21 FBI. 302s were provided to defense counsel. And,
22 obviously, it was not made a part of the trial as it was not
23 necessary to prove the elements of the crime charged.

24 But, again, we believe that based on a preponderance of
25 the evidence standard and based on the information provided

1 and the fact that it was vetted by the FBI, and there is a
2 phone call in support of the contact with MV One, we believe
3 that that objection should be also overruled.

4 THE COURT: Do you -- your client wishes to speak
5 with you. Do you want to talk to him?

6 MR. BUCKLEY: The -- I've heard just now from
7 Mr. Gandy some additional input. I think I would say that,
8 in conclusion, Mr. Gandy, through his counsel, denies that
9 he committed those acts that relate to the conduct in the
10 FDC.

11 THE COURT: The Court hears --

12 MR. BUCKLEY: May I visit one more time?

13 THE COURT: Yes.

14 (Counsel confers with the defendant.)

15 MR. BUCKLEY: Mr. Gandy wishes the Court to
16 understand that he insists that the interpretation of the
17 phone call that has been referenced by Ms. Zack is -- has
18 been misconstrued; and that the money was not being offered
19 for an elicit or obstructive purpose, and there was no money
20 offered.

21 THE COURT: All right. Thank you.

22 The Court has carefully reviewed the presentence report
23 and considered the information described there, as well as
24 information relating to -- which includes the information
25 relating to this specific telephone call.

1 I find no basis to Mr. Gandy's objections in this case.
2 There is no basis to find that the several sources of
3 information from within the FDC, which -- and there is no
4 indication of any kind of collaboration in confecting any
5 reason or any reason to confect or inflate information that
6 is harmful to Mr. Gandy or any reason to present it to the
7 FBI other than that it, in fact, occurred.

8 And the information that ranged from information of
9 Mr. Gandy's inappropriate behavior towards other inmates in
10 prison or in custody, as well as the information as to
11 attempts to obstruct justice, information about threats
12 made, information about the telephone call that is not
13 dependent, obviously, on any witness testimony or informant
14 statement, the Court finds that that is more than sufficient
15 and more than sufficiently reliable to meet the necessary
16 standards. The objection is overruled.

17 There is a request for a variance downwards because of
18 Mr. Gandy's stress and -- although he is competent, and the
19 diagnosis that he has of essentially being -- having a
20 severe personality disorder, which is different from
21 incompetence. Far different.

22 Putting aside that request for a moment and looking just
23 at the guideline calculations, the guideline ranges are
24 life. The statutory maximum is: On Count 1, not less than
25 ten years to life. Count 2, not less than 15 years or more

1 than 30. Count 3, not less than five or more than 20. And
2 Counts 4, 5, 6, and 7, not less than 10 to life per count.

3 There is a fine range. But in light of the high amount
4 of restitution that victims will be entitled to, once all of
5 that information is gathered, in all likelihood, there is no
6 ability to also pay a fine and I'm not going to impose one.

7 There is a mandatory special assessment of \$700 for the
8 counts of conviction.

9 The criminal history category is I. The range is what I
10 have announced. The court adopts the PSR and directs it be
11 made part of this record, along with the statements and
12 other written materials I've received.

13 And at this time the order of proceeding is a little
14 unclear, but perhaps best served by having the victims speak
15 first. And then Mr. Buckley and Mr. Kretzer and Ms. Zack
16 and Mr. Gandy can include that in their response.

17 So you may be seated until the victims have an
18 opportunity to testify.

19 THE DEFENDANT: May I speak?

20 THE COURT: Ask your lawyer first.

21 THE DEFENDANT: I don't believe it's fair that I
22 can't call my witnesses. I have witnesses.

23 THE COURT: Who are your witnesses?

24 THE DEFENDANT: Daniel Salinas, Marvin Ross.
25 There's several witnesses that I want to have, including

1 friends and family from -- that I know that I would like --

2 THE COURT: Are friends and family here?

3 MR. BUCKLEY: Yes, Your Honor.

4 THE DEFENDANT: But now, not everyone is here.

5 THE COURT: You don't need everyone. Friends and
6 family are going to talk about character or issues like
7 that, I'll hear.

8 Who here from Mr. Gandy's family who is willing to
9 testify?

10 MR. BUCKLEY: I have Mr. Joe Gandy, Mr. Gandy's
11 father; Ms. Julie Gandy, Mr. Gandy's stepmother; Mr. David
12 Gandy, his brother. And I know another gentleman with DPS,
13 who I don't expect will testify. And I haven't consulted
14 with the Gandy family as to their willingness --

15 THE COURT: All right. Why don't you do that.
16 After the victims, if they're willing to do so and it is not
17 cumulative.

18 I understand from the PSR that Mr. Gandy is not close to
19 his brother. So I'll hear from the father and stepmother if
20 they are willing to testify.

21 MR. BUCKLEY: Yes, Your Honor.

22 THE COURT: Thank you. Please be seated.

23 THE DEFENDANT: May I speak?

24 THE COURT: Please be seated.

25 May I have the victims who wish to speak stand, please.

1 Please come forward, sir. I would like you both to come
2 forward -- all three of you to come forward to be sworn, and
3 then have two of you be seated and the first will begin to
4 make any statements you wish.

5 (The victims were put under oath.)

6 THE COURT: All right. Would you please tell me
7 your names.

8 VICTIM NO. 1: [REDACTED]

9 VICTIM NO. 2: [REDACTED]

10 VICTIM NO. 3: [REDACTED]

11 THE COURT: All right. The two of you should be
12 seated. You guys pick.

13 You can adjust that mic to come closer to you, sir. Go
14 ahead, please. State your name, please, sir.

15 VICTIM NO. 1: [REDACTED]

16 It took me a while to think about what exactly I wanted
17 to say today. I thought, after a while, all of this would
18 just go away and I wouldn't have to think about it anymore.
19 As time passed, I would slowly just forget it all. For some
20 reason, I can't forget about it. I can't move on. I can't
21 let it go. I'm now 27, and over a decade has gone by since
22 the day I met Jason.

23 Everyone always says that time heals all wounds, but I
24 stand in front of you feeling like I just split open my
25 wound. I feel that they never really closed and they never

1 really healed.

2 I think about times before this when I used to be this
3 fun, bright, loving, silly young man. I was fearless. I
4 thought I could do anything. I was invincible with big
5 dreams and goals. I trusted and loved. These are feelings
6 and traits that I never thought people could lose and have
7 taken from them. So I never thought that losing them would
8 change me entirely.

9 Now I feel I will never be that person again. I feel I
10 am cold. I have a wall up. I don't trust. And, certainly,
11 it's hard for me to love. My life after Jason flew before
12 my eyes, and I wish I could take all those years back and
13 not suffer through them. I wish I can live freely and
14 innocent again, but I can't. I have to move on and try to
15 make the best out of my future with what scars I carry.

16 Because of what has been done to me, I for so long felt
17 as though I wasn't deserving of anything. I felt like I was
18 just an item or a piece of meat. I lost all innocence and I
19 lost respect for myself.

20 I was a high schooler who had been kicked out of his home
21 for being gay. And I thought I was entering a home for kids
22 like me. Little did I know that I was going to be tricked
23 into prostitution and loss of my innocence and carefree
24 ways.

25 I thought that it was okay for people to use my body in

1 exchange for money. I thought it was normal. I thought
2 that this was a way of life because this is what Jason told
3 me, it was okay. Even though I found ways to cope, I've
4 struggled my entire life to try and get to the goals and
5 dreams that I have for myself.

6 I tried to drown out my memory with alcohol. With the
7 drinking came anxiety and depression. With anxiety and
8 depression came the inability to work and finish college.
9 Not having money and food, I turned to things that I felt
10 were what I deserved and all that I was worth; sex work and
11 men who treated me like nobody.

12 I wanted to kill myself. I felt like nothing. I thought
13 that if I could just die, I wouldn't hurt anymore. I could
14 end all my suffering. I would be lying if I told you that
15 these thoughts don't cross my mind from time to time. I
16 would be lying if I said that I don't turn to the bottle
17 from time to time to feel numb and try to forget all of
18 this.

19 I'm here today looking for that opportunity to allow my
20 wounds to heal. When the arrest happened in 2012, I
21 immediately felt terrible. Not for Jason, but for all the
22 other victims. If I had just said something to a law
23 enforcement then, if I had just said something, maybe we
24 wouldn't be here. But we are here today. I'm so thankful
25 for the officer who noticed that something was wrong.

1 I have no doubt in my mind that if he wasn't caught, he
2 would have done this until the day he died. I feel and have
3 felt for so long that I was no longer the person that I
4 wanted to be. I felt chained mentally to the long months of
5 memories.

6 If this is something that I have to deal with for the
7 rest of my life, I think it's only right for Jason to deal
8 and suffer in prison for the rest of his. I don't find him
9 as a threat to myself anymore, because I am now older. I am
10 no longer the young teenager who couldn't support himself.
11 I'm no longer a victim. I'm a survivor, and this is my
12 statement.

13 THE COURT: Thank you, sir.

14 Are there questions by either prosecution or the defense?

15 MS. ZACK: Nothing from the United States, Your
16 Honor.

17 MR. BUCKLEY: Nothing from us, Your Honor.

18 THE COURT: All right. Thank you.

19 Victim No. 2, please.

20 And has U.S. Attorney provided notice to all of the
21 victims?

22 MS. ZACK: Yes, we have, Your Honor.

23 THE COURT: These are the three who wish to make a
24 statement, in addition to the written materials provided?

25 MS. ZACK: Yes, Your Honor.

1 THE COURT: Thank you.

2 VICTIM NO. 3 (in order): Good afternoon. I'm a
3 little choked up.

4 THE COURT: Name first, please, sir. Sorry.

5 VICTIM NO. 3: [REDACTED].

6 THE COURT: Take your time.

7 VICTIM NO. 3: I thought this was done in my life.
8 But I'm glad it came to light, because I realized that I
9 hadn't processed it yet. I just kind of numbed it. Even
10 today, I'm not going to lie, I don't have malice. I don't
11 want anyone to suffer. But I know that this would be a
12 criminal offense that would repeat itself and for people
13 whose lives will forever be impacted, myself included.

14 You know, I struggle every day. I don't have the luxury
15 of being confined for my protection on suicide watch. I
16 have to fight every day to live for myself. And it's hard
17 sometimes. It's easier to forget about it.

18 But I think, for the benefit of society at large, that
19 maximum punishment is really the only solace I can have. I
20 can grieve with this. I can process this. I can get
21 better. But I just don't want it to happen to anyone else.

22 I can't say anything else.

23 THE COURT: Thank you, [REDACTED].

24 Any questions?

25 MS. ZACK: The United States has no questions.

1 MR. BUCKLEY: Nothing from us, Your Honor.

2 THE COURT: Thank you.

3 VICTIM NO. 2: My name is [REDACTED].

4 The first time I met Gandy was on Pacific Street when I
5 was a homeless 18-year-old. My first attraction of him was
6 I thought he was a kind person that was going to help me. I
7 could get back on my feet.

8 I did not realize I was going to be entering into a life
9 of sexual servitude. I hold onto a lot of hate for many
10 years. There were times when I thought I couldn't live
11 anymore. He denounced everything that was precious in my
12 life. I told him that the client sodomized me and he didn't
13 do anything about it. And he just said that when I got
14 older and uglier, that it was something I would desire.

15 I would be lying if I said I did not hate him. Hate was
16 the only thing that kept me going. Hate was the only thing
17 that kept me awake. That made me wake up, because I knew
18 eventually one day that justice was going to catch up to
19 him.

20 I'm so happy that today is one day where I feel truly
21 alive, and I feel less than apathetic. And for the first
22 time, I'm starting to feel emotions that I haven't felt.

23 That's it.

24 MS. ZACK: The United States has no questions, Your
25 Honor.

1 THE COURT: Thank you, sir.

2 MR. BUCKLEY: Nothing from us, Your Honor.

3 THE COURT: All right. Thank you.

4 Do you want to call witnesses?

5 MR. BUCKLEY: May I confer briefly, Your Honor?

6 THE COURT: You may.

7 (Counsel confers with the defendant's family.)

8 MR. BUCKLEY: Your Honor, after consulting with the
9 available witnesses, the consensus among all is that they
10 would decline to testify on Mr. Gandy's behalf.

11 And if I may proffer their rationale, it's that they
12 understand that by providing words of support, they would be
13 subject to cross-examination. And they simply do not have
14 any explanation that they can offer that's beyond what is in
15 their support letters that would be productive for
16 Mr. Gandy.

17 So it is in support of him that they're declining. And
18 with one caveat, that David Gandy, his brother, did want to
19 correct the misimpression, if there is one, that he's not
20 close.

21 THE COURT: All right. That's fine. The Court will
22 view that as corrected and now accurately stated. The Court
23 accepts their decisions. The Court has read their letters.
24 And they are, of course, part of this record.

25 MR. BUCKLEY: Thank you, Your Honor.

1 THE COURT: All right. The Court has adopted the
2 PSR and directed that it be made part of this record. We've
3 heard from the victims.

4 And at this time, I think I would like to hear any
5 statement that Mr. Buckley wishes to offer, Mr. Kretzer, and
6 then Mr. Gandy, and then I'll hear from the government.

7 MR. BUCKLEY: Thank you, Your Honor.

8 I will not -- I think the record has become clear and the
9 Court's rulings have become clear with regard to the offense
10 conduct. So I won't belabor oration about that. But I do
11 think it's worthwhile to comment on some of the peripheral
12 information in this case and peripheral things that have
13 happened, and which is also addressed in the motion for
14 downward departure or variance.

15 That is that Mr. Gandy, as he's been diagnosed with
16 borderline personality disorder, with potentially some other
17 personality disorder associated with it, is exactly the type
18 of person who, in addition to the offense conduct would,
19 through his disability, invoke the ire of anyone who would
20 come into contact with him. And I say that not meant to be
21 disparaging to Mr. Gandy. But I think it is clear from the
22 history of this case, that people within the FDC, some of
23 Mr. Gandy's past lawyers, have become at odds with
24 Mr. Gandy. And that is simply the nature of borderline
25 personality disorder.

1 I don't testify as an expert today on that subject,
2 except that I have in my 20 years of experience encountered
3 several remarkable cases of it. And these are people who do
4 not enjoy their disorder. They see their interactions with
5 others in ways that are different than a rational person
6 would. As a result, they become alienated. They are
7 continually tortured by other's reactions to their thoughts
8 and their conduct.

9 And so with regard to that, as it would be easy for any
10 of us to look at Mr. Gandy's interactions and the
11 frustrations that we've had with many of them as being
12 additional justification for a more punishment of Mr. Gandy,
13 as someone we would characterize as a bad or difficult
14 person. I would encourage the Court to recognize that those
15 are the very features that come with this disorder that
16 Mr. Gandy has not asked for, nor do I suspect he enjoys
17 having.

18 With regard to that, there is case law from around the
19 country, as I've cited in the motion for downward variance,
20 that recognizes that when conditions of confinement are
21 objectively harsh that there is a justification, in the
22 Court's discretion, to depart downward to produce a shorter
23 sentence, with the recognition that day-for-day is more
24 difficult than it would be in a typical -- perhaps I would
25 use the term "heartland" sentence that is contemplated by

1 the guidelines or under 3553(a).

2 And in this case, it's a little bit of a twist on that,
3 because the -- Mr. Gandy has voiced a number of concerns
4 with the objective quality of his incarceration. I know the
5 Court has heard those. And those have been the subject of
6 some discussion over the last six-and-a-half years.

7 In addition to that, what I think is clear, and I proffer
8 this to the Court that I do believe Mr. Gandy is under a
9 significant amount of emotional distress as a result of his
10 confinement and some of the conditions that he's been placed
11 under; which, of course, come back to the response that he
12 gets from being someone with borderline personality
13 disorder.

14 So in that sense, Mr. Gandy's experience, as someone
15 afflicted with this thought disorder, is analogous to the
16 experience of someone who is subjected to objectively harsh
17 conditions. So I would ask the Court, without getting into
18 the quantification of what I think that is worth, to address
19 that in the best way that Your Honor can.

20 THE COURT: What do you recommend is the appropriate
21 sentence?

22 MR. BUCKLEY: I knew that Your Honor may ask that
23 question.

24 Well, I know that we're at 360 to life. And I think a
25 sentence that would allow Mr. Gandy to know that there is a

1 light at the end of the tunnel, wherever that light is,
2 would enable him to have an existence that is punitive; that
3 for a period of time is incapacitating; and that also allows
4 him to not be tortured with a reality that he will never
5 again have an opportunity to exist in free society.

6 So I would say, Your Honor, that a sentence of less than
7 360 months would be --

8 THE COURT: That would be 359 months. Are you
9 asking for something in the neighborhood of 240 months?

10 MR. BUCKLEY: I would, Your Honor. I think that
11 would be -- a sentence in excess of 240 months would be
12 greater than necessary to achieve the objectives of 3553(a).

13 THE COURT: All right.

14 MR. BUCKLEY: Thank you, Your Honor. I don't know
15 if Mr. Kretzer has anything. Sorry.

16 THE COURT: Mr. Kretzer, is there anything you want
17 to add?

18 MR. KRETZER: Nothing further, Judge.

19 THE COURT: All right. Mr. Gandy? Go ahead,
20 please.

21 THE DEFENDANT: I haven't read this thing. I got
22 about halfway through, and then I was rushed over here to go
23 to sentencing. I do feel a lot of people --

24 THE COURT: You had an opportunity this morning to
25 read it, as well as other opportunities in the past.

1 So go ahead.

2 THE DEFENDANT: I'm listening to my lawyers speak.
3 It's making a lot of sense. I feel a lot of people hate me.
4 It's -- I guess there is something wrong with me, for me to
5 be hated by so many people.

6 I don't get to read my presentence report. I don't get
7 to have witnesses on my behalf. I don't get to spend much
8 time -- every time my lawyers visit, no offense to them, I
9 feel like they're doing the best they can. I feel they
10 can't wait to leave when they visit me. It makes you want
11 to kill yourself. And I've tried more times than I can
12 count. I've tried to drowned. I've tried hanging myself.
13 I've cut myself everywhere I can.

14 I feel that maybe these victims would like me to kill
15 myself. [REDACTED] is nodding his head no.

16 MR. BUCKLEY: Don't address the victims.

17 THE DEFENDANT: It would just be great to know they
18 don't want me to kill myself. I don't know if [REDACTED] wants me
19 to kill myself.

20 THE COURT: They're under no obligation to respond.

21 THE DEFENDANT: They're under no obligation to ask
22 that.

23 THE COURT: Go ahead, Mr. Gandy. Keep going.

24 THE DEFENDANT: But I'm upset that I haven't died in
25 my last suicide attempts, based on the way I'm treated by

1 everyone that I come in contact with. I'm sorry I'm still
2 alive. I hope that, one day, a suicide attempt will be
3 successful, and I won't have to be in a situation like this
4 ever again.

5 I wanted to call some witnesses up here that were my
6 suicide companions, I've spent the last 89 days. If you add
7 that, with 618 days that I've already spent on suicide
8 watch, and solitary confinement over the last six-and-a-half
9 years at FDC Houston, it's 707 days in solitary confinement.

10 According to the United Nations, anything over 15 days is
11 considered torture in solitary confinement. Right now, on
12 day 89. I'm sure when I go back to prison, they're going to
13 put me back in a cell where I did not have a shower this
14 morning. The shower is turned off. I can't shower. I
15 can't brush my teeth. I can't use a spoon to eat. I have
16 to eat like a dog. I feel like an animal.

17 Every day, I'm freezing. I feel -- I have poor
18 circulation since I was a kid. I remember feeling needles
19 in my hands when I would go to sleep. And so when you're
20 really cold and you try to stand up when you're cold, your
21 ankles roll over and you can't walk. So that's why I missed
22 my legal visit is because I was so cold. When they came, my
23 nose was running. I was sneezing. I didn't want to get
24 them sick.

25 They told me when I went into suicide watch, you're going

1 to get sick. All we're going to do is give you Tylenol.
2 Because it's freezing cold and you're naked. You're just
3 going to sit like that.

4 I know [REDACTED] said it was a luxury to be on suicide
5 watch --

6 MR. BUCKLEY: Don't --

7 THE DEFENDANT: All you can think about is dieing
8 when you're on suicide watch. You don't want to live like
9 that. You crave any way to end the torture.

10 When I was growing up, my mom told me my dreams were --
11 my hands, I felt like needles were poking. I felt like they
12 were really big. I told me mom that. And she said maybe
13 "Jason" means "healer" in Hebrew. Maybe you're meant to
14 heal people with your hands. I went to massage school and I
15 got my license. I was very good at massage.

16 In fact, the owner of the school named Erica Liktor
17 (phonetic), who was in a German death camp when she was a
18 little girl, her and I connected. She was a very nice lady
19 who said I was the best student on my intern paperwork,
20 which the government seized all my paperwork.

21 I have no access to my legal documents. I feel that is
22 because I'm hated. I have no access to property that was
23 seized from my house, which -- so I don't have anything to
24 bring to show you, because I've been on suicide watch. I
25 have no legal doc -- anyway. She wrote on my intern

1 paperwork that I was the best student she ever trained; that
2 I did my own therapy very well. She enjoyed teaching me
3 massage. And [REDACTED] said, during my court, that the massage
4 were very scientific. That they were -- there is no
5 sucking, no fucking, no kissing during these massages.

6 I'm not accused of making people do prostitution as it
7 was spoken, I just heard. I've never wanted anyone -- in
8 fact, I've known escorts who make \$200 an hour -- I charged
9 \$80 an hour -- who have sex --

10 MR. BUCKLEY: --

11 THE DEFENDANT: I want to finish. I don't care --
12 who have sex for money. I do massage for money. I've never
13 asked any of these people to do anything but massage.

14 If there is something that they wanted to do other than
15 massage -- and I wasn't there to stop them. I understand I
16 can't do that.

17 In fact, when I moved to San Diego -- and I lived in San
18 Diego in 2007 summertime, when [REDACTED] said he went to
19 my house. And I don't understand why he would lie.

20 I have documentation, but my attorneys didn't spend
21 enough time to get that documentation that I was in a house
22 on Hillside Drive, I believe was the name of the street, in
23 San Diego. And I rented a trailer park when I bought a -- I
24 bought a 2007 Tundra in the summer of 2007, and I bought a
25 toy hauler in the summer of 2007. I went back to Texas in

1 August -- in October of 2007. So what he's saying is not
2 true.

3 And I believe -- I noticed they dried up as soon as they
4 sat back down. Had smiles on. Some of them smiling a
5 little bit. I believe that it's possible that these people
6 are saying things negative to try to get the restitution.
7 Like you said, I'm going to have no money left once I'm done
8 with this. Because they'll take so much money, you won't
9 require me to pay any fees or whatever.

10 If I can do anything to make them feel better. I don't
11 like that they got up there and cried. I care about every
12 one of them. In fact, I wrote a will. If I kill myself,
13 they'll get all my money. I care about every one of them.
14 I hope that happens, because I don't want to go through life
15 in prison.

16 I want to turn my house into assisted living home. I
17 feel, since I've gotten so close to death in these attempts,
18 that -- and that's why I wanted to bring some witnesses
19 that's been with me on suicide watch. One of them is Dana
20 Salinas. His mom is 70 years old. He would love to have
21 his mom come live in my assisted living home. I have a lot
22 of ideas on, if I was older, how I would want to be treated
23 in assisted living home. I'm hoping that my house doesn't
24 get taken away and that I do get to leave prison one day.
25 And without any kind of hope to get out, which it sounds

1 like I'm going to get life today, I don't see myself living
2 through a prison term.

3 I've spent the last 90 days in suicide watch. Talking is
4 kind of weird. Being around human beings is weird. I'm
5 locked in a cell where all I have to talk to is mostly
6 people who don't like me. I only have one suicide companion
7 that liked talking to me. He got fired for talking to me.
8 An officer named Ms. Scion (phonetic) fired him. And then
9 she called me a pedophile, which I can't believe an officer
10 can tell an inmate that I'm a pedophile, and then tell them
11 not to talk to me and then they get fired. Then she became
12 my suicide companion. That hurt real bad to have someone
13 who hates me that much, sitting in front of me for three
14 hours just basically torturing me worse than I'm already
15 tortured.

16 I'm sorry, whatever he was talking about, I never knew
17 that until now. I didn't know what the diagnosis was when I
18 was in Butner in -- my lady that was my psychologist
19 retired -- or moved. So I didn't really get to spend enough
20 time with her to find out what the final thing was that was
21 wrong with me. I apologize for everything that they said
22 about me, and there is many things that are not true.

23 And I'm hoping that -- I'm sorry. I'm really sorry for
24 hurting you. Never -- my whole life, I like helping people.
25 That's why I went to massage field. I can put myself in

1 other people's shoes, and I can feel their pain.

2 And that's why when my mom was dying of cancer in 2008,
3 when she told me where her cancer was, I felt like I had
4 cancer in that same spot. It hurt to be around my mom, but
5 I felt like I was dying. That is my biggest regret in life.
6 [REDACTED] carried my mom up the beach-house steps in Pirates
7 Beach. That's the last memory I have of my mom before she
8 passed away in 2008.

9 And 2005, when she got cancer, I think my guard went
10 down. I no longer had somebody that really, really, really
11 loved me more than anybody. My guard went down as far as
12 being able to have someone to call when I'm at the grocery
13 store. Or I remember a lot of times, when I call my mom and
14 ask her about what I should do in certain situations, like
15 when --

16 THE COURT: Mr. Gandy, I think we're getting a
17 little off topic.

18 THE DEFENDANT: I'm trying to get to where my mental
19 illness came from.

20 THE COURT: I don't think that any of us can know
21 where it came from. The records are clear. You may, of
22 course, continue with your statement within limits;
23 reasonable limits that are pertinent to the issues that I
24 have to address and the decisions I need to make.

25 THE DEFENDANT: I'm not upset for you telling me you

1 don't care and --

2 THE COURT: Mr. Gandy, just finish your statement
3 please, sir. I'm giving you that opportunity.

4 THE DEFENDANT: It's really hard to talk when no one
5 wants to hear me talk.

6 THE COURT: Mr. Gandy, finish your statement,
7 please. You have that opportunity. We are all listening.

8 THE DEFENDANT: I'm trying to -- I can't talk about
9 my mom? What part am I getting off topic?

10 MR. BUCKLEY: May I counsel with Mr. --

11 THE COURT: Please.

12 (Counsel confers with the defendant.)

13 THE DEFENDANT: I'm sorry for talking too long. I
14 have no one to talk to. It's hard to explain, being on
15 suicide watch as well.

16 I would like to ask Your Honor -- the plea deal Sherri
17 offered me, I regret not listening to my lawyers. Ten
18 years, it was a great plea deal. I'd ask for you to please
19 bless me and not hit me too hard over the head with that
20 hammer, because Sherri is well aware of all of these things
21 and offered me ten years. I'm really sorry that I didn't
22 take the plea deal.

23 I'm very -- I wish -- if these victims were allowed
24 later, once you hit me the hammer, to make contact with me.
25 And I've been told sometimes victims want to do that. I

1 would appreciate the opportunity to speak with them and help
2 them in every way I can. I'm upset that they're upset.

3 I'm going off --

4 THE COURT: Thank you, Mr. Gandy.

5 THE DEFENDANT: Please give me the lowest possible
6 sentence and know that I do want to be a better member of
7 society and have a chance to open an assisted living home
8 and do better things with my life. There's a lot of things
9 I could have done better with my life. When it comes to
10 crossroads, I always take wrong turn. Like right now I'm
11 doing it, because they're telling me to sit down. I'll sit
12 down. I apologize for taking up so much time.

13 THE COURT: That's fine. Thank you.

14 Ms. Zack, briefly. I've heard a lot.

15 MS. ZACK: Your Honor, just to correct the record,
16 it's not 360 to life. It's life. There is nothing about
17 this case that takes it out of the heartland in a downward
18 departure or variance area.

19 With all due respect to Mr. Buckley and all his research,
20 I think what became very clear, again, here today is that
21 Mr. Gandy casts himself as a victim.

22 You heard from some incredibly brave young men who came
23 forward, who told this Court what this has done to them.
24 You sat through a trial and heard that.

25 And let's talk about what people get sentenced to in

1 these types of cases, so as not to create a disparity.
2 Recently, Judge Hanks, and within the last two years,
3 sentenced Charles Fulton to life. Why? Because he did
4 exactly what Mr. Gandy did, but his victims were female.
5 They were young impressionable girls who were used by
6 Mr. Fulton to make Mr. Fulton money and to support
7 Mr. Fulton in a lifestyle to which he wanted. And he got
8 life. And those girls testified at trial.

9 Mr. Gandy was made a plea offer, and he's right. But
10 that was before we knew about the other victims. That was
11 in relation, at that point, to not only Minor Victim One,
12 but we had information about adult victims. We ultimately
13 uncovered other victim information. And at that time,
14 Mr. Gandy denied that.

15 The one incredible thing that I think this Court needs to
16 take away from this is Mr. Gandy isn't sorry about what he
17 did. He's never shown an iota of remorse for what these
18 individuals have suffered. They have lived through
19 dependency issues, both drug and alcohol. They have
20 struggled. And yet, they have all made something of their
21 lives.

22 He's offended that someone called him a pedophile. Well,
23 that's what you call people who are sexually attracted to
24 children. What he did was manipulate those children. He
25 has sat in this courtroom today and attempted to do it

1 again. He is staring at them. He's asking them for
2 forgiveness. He wants to be forgiven. Yet, he isn't sorry
3 for a thing he's done.

4 If society needs to be protected from somebody, it is
5 somebody like Mr. Gandy. And this Court has an opportunity
6 to make sure that he never gets out. There is nothing in
7 his history that under 3553(a) would support a downward
8 variance. His mental illness, he has shown no indication
9 that he wants to get better at all. In fact, he aggravates
10 the situation repeatedly. He likes being the victim. He
11 likes all the attention. He likes to complain about it.
12 And he is going to continue to do that, and he is going to
13 do that in the FDC. He's going to do that wherever BOP
14 sends him, because that is who he is. He is a master
15 manipulator who has gotten away with it up until this point.

16 And this Court has an opportunity, on behalf of the
17 victims who are here, those that are not here and those that
18 we never heard from that we know are out there, to make sure
19 that he cannot do this again.

20 There is nothing a life sentence, in this case, that
21 would take this out of the heartland. We have recently
22 sentenced an individual, Yasmine Joseph, to 22 years, one
23 victim. Roger Maldonado, 35 years, two victims. Bobbie
24 Barrett, two victims, 35 years.

25 And I could go on and on with cases just within the

1 Southern District of Texas that would support a life
2 sentence for Mr. Gandy, given the number of victims and the
3 period of time that his crimes stretched out over.

4 So the United States, Your Honor, would ask that you
5 sentence him to life in prison. Thank you.

6 THE COURT: Thank you.

7 Anything further from your side?

8 MR. BUCKLEY: Nothing further from us, Your Honor.

9 THE COURT: All right. Thank you.

10 This case has been difficult for everyone from the
11 outset. It has been a challenge on a number of levels. But
12 the hardest one is seeing Mr. Gandy and the impact of what
13 he has done, who he is, what drives him or motivates him on
14 those he has used and abused, and on himself.

15 He is not a victim. I'm not suggesting that. Whether he
16 is evil because he is evil -- and the most evil among us is
17 the person who is willing to exploit and harm others for his
18 or her own gratification or enrichment of whatever form.
19 Whether he is evil because he is evil or because he is
20 disordered or both is a metaphysical medical issue beyond
21 the competence of this Court and perhaps anyone right now.

22 This Court is obligated today to fashion a sentence that
23 will serve the guideline objectives of punishment,
24 incapacitation, deterrence; if possible, rehabilitation.
25 Although that is, for many years now, realistically viewed

1 as aspirational and often beyond the reach of what is a
2 penological institution. And to serve and recognize that
3 3553(a) factors that focus on the nature of the offense, its
4 duration, and the nature of the person. None of those
5 reflect well on Mr. Gandy.

6 Mr. Gandy has been proven to be an abuser of human
7 beings, vulnerable human beings. Their testimony was
8 agonizing for them and for those who now share some of their
9 experience. Mr. Gandy says he's empathetic. Mr. Gandy's
10 life does not reflect that. It betrays it.

11 So what do I do with the fact that Mr. Gandy is diagnosed
12 as disordered, but in ways that make him evil. Mr. Gandy is
13 far from stupid. The record shows that. His own statements
14 show that. His college records show that. Mr. Gandy does
15 manipulate some of what he complains about. The conditions
16 of his confinement are the result of his manipulative
17 efforts to delay, defer, avoid, minimize the trial, the
18 consequences, and this day.

19 They have not succeeded in doing anything but delay and
20 making Mr. Gandy's own situation worse than it needs to be.
21 But that is no one's fault but Mr. Gandy's. And his
22 willingness to abuse, exploit, and harm others has
23 manifested itself in prison, in custody. When he has a
24 record of attacking other inmates, sexually abusing them.
25 That was why he was put in solitary to begin with.

1 THE DEFENDANT: No, that's not true.

2 THE COURT: So, Mr. Gandy, what is the appropriate
3 response for me as the Judge, based on what the jury found,
4 which the Court has found amply supported, based on what
5 your lawyers have presented, what the government has
6 presented, what the victims have said?

7 And thank you and thank the family members for the
8 letters and for being here today. It was not easy for
9 family or friends, much less the victims. And the Court
10 understands that.

11 But how does all this translate to the length of time
12 that Mr. Gandy will serve in prison? Government wants life.
13 The government cites not only the nature of the conduct but
14 also the danger that Mr. Gandy, despite the passage of time
15 and effects of age, will be unable to resist some forms of
16 continued torture of vulnerable and minor victims.

17 Mr. Gandy is not a young man, by any means. He's already
18 spent a significant amount of time in prison. But going
19 forward, what is the total? The only advantage of something
20 less than life is that it does extend some hope. And the
21 Court is not careless about that. Hope matters. If there
22 is a leavener, a reducer of evil, it may be the presence of
23 hope. Again, that is beyond my competence.

24 The Court believes that the combination of the guidelines
25 and the 3553(a) factors and all of the massive information

1 before this Court and the people who have seen this record
2 unfold, that the appropriate sentence is: 360 months on
3 Count 2; 240 months on Count 3; and on Counts 4, 5, 6 and 7,
4 360 months, for a total of 360 months.

5 That is not life, but it is not short and it should not
6 be. Punishment demands it. Incapacitation and the need for
7 safety demands it. Deterrence, which may be only
8 incapacitation in this case, demands it. And it is this
9 Court's judgment. The terms are to be concurrent.

10 When you're released from prison, you'll be on supervised
11 release for life as to each of those counts to run
12 concurrently. Within 72 hours of your release from the
13 Bureau of Prisons, you must report in person to the
14 probation office and the district to which you're released.

15 During supervised release, you must comply with all the
16 conditions. They include that you not commit any federal,
17 state, or local crime. They also include that you comply
18 with the requirements of the Sex Offender Registration and
19 Notification Act as directed by the probation officer, the
20 Bureau of Prisons, or any state sex offender registration
21 agency in any state in which you reside, work, or a student
22 or were convicted of a qualifying offense.

23 You must not possess or use computers, as defined in the
24 statute, or other electronic communications or data storage
25 devices or media that are not disabled to prevent you from

1 accessing any kind of pornographic -- child pornographic
2 site.

3 You must submit your computers or other electronic
4 communications or data storage devices or media to a search.
5 And that may be done at the direction of the probation
6 officer at a time to be, and place and date as the
7 probation -- and frequency as the probation officer decides.

8 You may not have any direct contact with any child you
9 know or reasonably should know to be under 18, including any
10 children that you may have, without the advanced permission
11 of the probation officer. If you do so without the
12 permission, you must report this contact to the probation
13 officer within 24 hours. Direct contact includes written
14 communication, in-person communication, or physical contact.
15 It does not include incidental contact during daily,
16 ordinary activities in public places.

17 You may not view or possess any visual depiction,
18 including any photograph, film, video picture, or computer
19 or computer-generated image or picture of sexually explicit
20 conduct.

21 You must submit to a polygraph or similar testing at the
22 probation officer's discretion as a means of ensuring
23 compliance with the requirements of supervised release.

24 You may also -- you must also participate in
25 plethysmograph testing, as a part of the required

1 participation in the sex-offender-specific assessment or
2 treatment.

3 The probation officer's search of the computer includes
4 searches for the purpose of determining whether you have any
5 prohibited data, whether the monitoring software is working
6 correctly, and whether there have been any means to
7 circumvent it, avoid it, or disable it. You must warn any
8 other people who are using your computers that they may be
9 subject to searches under this condition.

10 The Sex Offender Treatment Program is also required. It
11 is a mental health treatment and sex offender treatment
12 program provided by a registered sex offender treatment
13 provider. This may include group or individual counseling
14 sessions, various screens and tests to assist in treating
15 and monitoring, all to be administered by the sex offender
16 treatment contractor, the counselors, the mental health
17 providers or their designees.

18 You must participate as instructed and abide by all of
19 the policies and procedures of the program until you are
20 released by the directors of the program and the probation
21 officer who, in consultation with the treatment provider,
22 will supervise your participation in the program. You will
23 incur the costs associated with the program, and that's
24 based on your ability to pay as the probation officer
25 determines.

1 You do not have any right -- you give up your right to
2 have the records for the mental health treatment imposed, as
3 a consequence of this judgment, to be maintained as
4 confidential. Instead, the probation officer may review the
5 course of treatment and progress with the treatment advisor
6 and may provide the pertinent information, if the mental
7 health provider or a mental health provider requests to have
8 access to that information.

9 You may have no contact with victims or their families,
10 including letters, communication, any kind of electronic
11 communication whatsoever, without the -- including any visit
12 or contact through a third party, without the prior written
13 consent of the treatment -- of the probation officer.

14 We've already talked about the mental health treatment
15 program. It's not limited to sex offender treatment. It
16 can extend to other mental health aspects.

17 Same conditions. You must take all the medications that
18 are prescribed by your treating physician and pay the costs
19 if you're financially able to do so. You must participate
20 in any program that you're directed to by the probation
21 officer in consultation with the treatment provider and,
22 again, pay the costs if you're financially able to do so.

23 Restitution will be determined in the future when all the
24 information is received and made part of this judgment. I
25 find no ability to pay the fine in addition to restitution.

1 I'm waiving the fine. Mr. Gandy must pay the \$700
2 mandatory assessment, due immediately. The balance due in
3 payments of the greater of \$25 a quarter or 50 percent of
4 any wages earned in prison. Any balance will be paid in
5 monthly installments, after supervised release begins 60
6 days after beginning, of \$300 per month. Payments are to be
7 made through the United States District Clerk of the
8 Southern District of Texas.

9 Is there any request for designation to a particular
10 facility?

11 MR. BUCKLEY: We would request Bastrop, Your Honor.
12 And, of course, because of the other issues, the BOP may
13 send him somewhere else entirely.

14 THE COURT: I will recommend the facility that, in
15 the judgment of the BOP, will best address the opportunities
16 that may be beneficial for mental health counseling and
17 similar kinds of support for Mr. Gandy, but will also meet
18 his -- the security needs that he presents.

19 To the extent family visitation facilitation is a
20 workable goal, I recommend that the Bureau consider that as
21 well.

22 Anything else?

23 MR. BUCKLEY: No, Your Honor.

24 THE PROBATION OFFICER: Just to clarify. Was there
25 a sentence pronounced on Count 1?

1 THE COURT: Probably not. Let me make sure.
2 It's also 360 months.

3 THE PROBATION OFFICER: Thank you, Your Honor.

4 THE COURT: Again, concurrently to the other
5 sentences.

6 Thank you very much.

7 MR. BUCKLEY: May we be excused, Your Honor?

8 MS. ZACK: Nothing further.

9 THE COURT: Mr. Gandy, you do have a right to
10 appeal. If you want to file an appeal, you must file your
11 notice of intent to do so within 14 days from the date the
12 judgment is entered. If you want a lawyer to represent you
13 on the appeal and you cannot afford one, you may ask the
14 Court to appoint one.

15 Do you understand those rights, sir?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: All right. Yes, you are excused.

18

19

20

21

22 (Proceedings concluded.)

23

24

25

C E R T I F I C A T E

I hereby certify that pursuant to Title 28, Section 753 United States Code, the foregoing is a true and correct transcript of the stenographically reported proceedings in the above matter.

Certified on January 11, 2018.

s/ Nichole Forrest
Nichole Forrest, RDR, CRR, CRC

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